Shaping Canada's Future Together

Discussion Guide

for participants in Canada's constitutional renewal

92-03029/

ERRATUM

On page 17 the second paragraph of the background note to Proposal 13 should read:

> "The accession of existing territories to province-hood can be achieved with the support of Parliament and seven provinces representing at least 50 percent of the population."

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FOREWORD

Message from the Minister Responsible for Constitutional Affairs

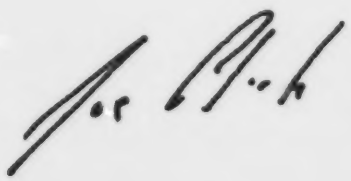
Our country is currently facing a period of momentous challenge and opportunity for Canadians.

Canada's Constitution has enabled Canadians to build a society based on compassion and accomplishment, which has made this country the envy of the world. It is not an abstract document, but an expression of the values and principles which unite us as a people.

Your involvement in the current constitutional debate is vital to reshaping and modernizing our Constitution so that it recognizes the diversity of our views as well as our shared heritage and aspirations.

This discussion guide has been prepared to help promote the active involvement of Canadians in discussing and improving the government's constitutional proposals which were tabled in the House of Commons on September 24th, 1991.

I thank you for your contribution. If we approach this task with the same spirit of understanding and co-operation shown by those who created this nation 125 years ago, I am confident that together we can renew a vision of Canada which will enable our country to flourish into the next century.



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INTRODUCTION

PURPOSE OF THE DISCUSSION GUIDE

This discussion guide has been produced to foster:

- awareness and understanding of the government's constitutional proposals and the constitutional issues facing Canadians
- informed discussion of the proposals and their implications for Canadians
- the development of advice to the Government on the acceptability of the proposals and suggestions on how to improve them
- improved understanding of diverse views and the development of consensus.

The main section of this discussion guide presents the government's constitutional proposals as tabled in the House of Commons on September 24th, 1991. It also presents a brief background for each proposal, some questions which you might use to initiate discussion, and additional information on the constitutional process and sources of further information.

WHAT IS THE CONSTITUTION?

The Constitution is the supreme law of the land

The Constitution is the supreme law of the land. The Canadian Constitution is made up of a number of acts of the British and Canadian Parliaments, such as:

- the *Constitution Act, 1867* (formerly the British North America Act, 1867)
- the *Constitution Act, 1982,* which includes the *Canadian Charter of Rights and Freedoms* and other new provisions, including the procedure for amending the Constitution of Canada (as amended by the Constitutional Amendment Proclamation, 1983).

As well, some of the Constitution is unwritten and is based on convention or longstanding practice.

Finally, by interpreting the general provisions of the Constitution and creating precedents by applying them to specific cases, the courts have played a central role in adjusting the Constitution to changing conditions and ideas.

Some of the Constitution is unwritten and is based on convention

DEVELOPING YOUR VIEWS

Some groups have found the following techniques helpful in developing their ideas and reaching consensus on issues:

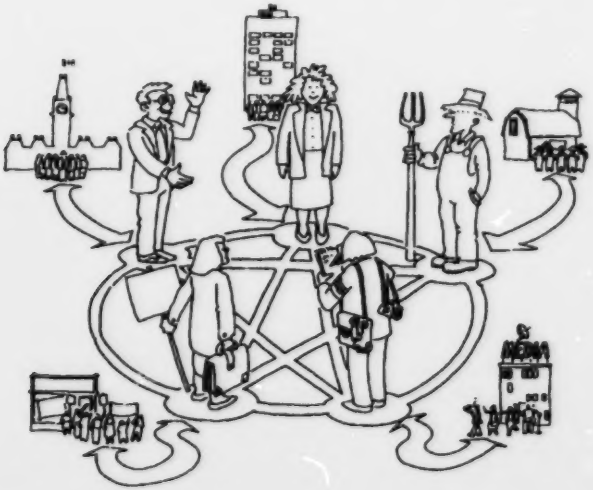
Develop recommendations for improvements

- Organize a meeting to review and discuss the constitutional proposals. Determine areas of agreement and develop recommendations for improvement. Attempt to include people who represent very different interests than yours in the constitutional process.
- Develop an agenda for discussion by selecting the constitutional proposals and questions of most interest to you.
- Distribute the draft agenda and resource materials such as copies of the proposals, background papers, position papers by other groups, etc., to participants in advance of the meeting. You might use the suggested table of contents in the following section as a draft agenda for the discussion.

Emphasize the need to find consensus

Make sure that all views are heard

- Make one person responsible for chairing the meeting, making sure that views are heard and recorded, and that the discussion gets through the agenda of constitutional proposals and questions in the planned time.
- Obtain a copy of the video on the constitutional proposals to assist in introducing the key issues.
- Emphasize the need to find consensus on a package of proposals that recognizes the divergent viewpoints and perspectives in the country.
- Prepare a report on the meeting indicating areas of consensus and recommendations for change. Distribute it to participants soon after the meeting.
- Discuss your suggestion with other individuals and organizations.
- Send your report to the Minister Responsible for Constitutional Affairs, the Special Joint Committee on a Renewed Canada, and your Member of Parliament.



SUGGESTIONS ON THE FORM OF YOUR CONTRIBUTION

Suggestions for written report

If you decide to develop and contribute a written report, it will probably be read more easily by more people if you also provide a summary of one or two pages. Your submission might include the following sections:

1. Who you are: individual, group or organization
   - your general perspective and objectives
   - how you went about developing your ideas; who was involved
2. The values you feel should shape the outcome of the constitutional process
3. Comments and recommendations on:
   - the package as a whole
   - proposals of greatest interest to you or your organization
   - other constitutional ideas
4. Areas of clear agreement and disagreement, minority views, etc.
5. Your plans for communication and follow-up.

THE PROPOSALS

OVERVIEW

Objectives

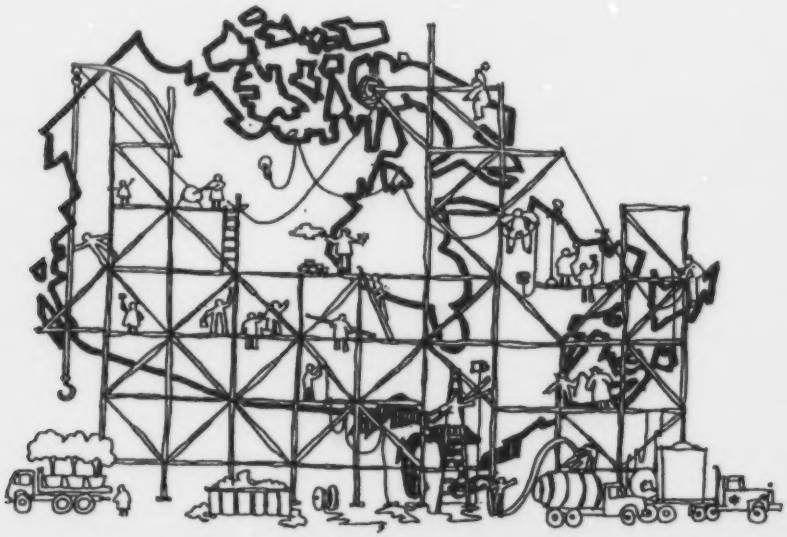
A number of objectives underlie the government's constitutional proposals:

- affirming our shared values as Canadians;
- recognizing diversity;
- making democratic institutions more responsive to Canadians; and
- creating a stronger economic union among the parts of Canada.

A number of objectives underlie the government's proposals

Every proposal attempts to balance diverse views and needs. The challenge for governments in developing constitutional proposals, and the challenge for you in reviewing and improving them, is to seek the best possible balance of needs and interests.

Every proposal attempts to balance diverse views and needs



Defining "Canadian"

Proposals 1 to 7 deal with what it means to be Canadian. They include:

- a "Canada clause" in the Constitution that defines the basic identity and values of Canadians;
- a provision for aboriginal participation in the current constitutional talks, and for a constitutional process in the future that will address ongoing aboriginal issues;
- a provision for aboriginal self-government and for guaranteed aboriginal representation in a reformed Senate;
- a reaffirmation of citizens' rights and freedoms and making it more difficult to override citizens' rights;
- recognition of Quebec's distinctiveness and Canada's linguistic duality; and
- inclusion of property rights in the Charter of Rights and Freedoms.

Defining what it means to be Canadian

Making Government More Responsive

Making federal institutions more democratic and responsive

Proposals 8 to 13 are aimed at making federal institutions more democratic and more responsive to Canadians. This section includes:

- reform of the House of Commons;
- an elected, effective and more equitable Senate;
- Senate approval of appointments to regulatory boards and agencies;
- provincial/territorial roles in Supreme Court appointments; and
- a new constitutional amending formula.

The Way to a More Prosperous Future

A better-governed, more competitive country

The purpose of proposals 14 to 28 is to make Canada a better-governed country, more competitive internally and internationally. In summary, these proposals would:

- ensure freer movement of people, goods, services and capital within Canada;
- provide greater federal and provincial coordination in managing the economic union; and
- recognize exclusive provincial jurisdiction in a number of areas and negotiate agreements for others.

PART I:
SHARED CITIZENSHIP AND DIVERSITY

Canadian identity and values

Part I of the proposals deals with what it means to be Canadian, our identity and values.

Proposal 1.
Reaffirming the Rights and Freedoms of Citizens

Reaffirm basic rights in Charter

The Government of Canada reaffirms the basic rights set out in the Charter as a fundamental feature of the Canadian Constitution. The Government of Canada proposes that the *Canadian Charter of Rights and Freedoms* be amended to guarantee property rights. The Government of Canada further proposes that the votes necessary for Parliament or a provincial legislature to invoke the override (section 33) be changed from a simple majority to 60 percent of the members of Parliament or the provincial legislature.

Background

- ✓ In 1982 the *Canadian Charter of Rights and Freedoms* was entrenched in the Constitution.
- ✓ This proposal would add protection of an individual's property to the Charter.
- ✓ The main intent is to ensure due process is followed and compensation is provided, where appropriate, when governments take actions which infringe upon an individual's property rights.
- ✓ Canada's Constitution at present has a "notwithstanding clause" (section 33) which allows the federal Parliament or provincial legislatures to override in specific cases, certain rights set out in the *Canadian Charter of Rights and Freedoms*. The proposal would make it more difficult for Parliament and provincial legislatures to do this.

Ensure due process & fair compensation re property rights

Limiting "notwithstanding clause"

Questions

- ❑ Should individual property rights be recognized in the Charter?
- ❑ Are there other rights which should be included in the Charter?
- ❑ Is this proposal the appropriate way to balance the right to property and other rights and concerns of other citizens? If there are potential drawbacks, how can they be minimized?
- ❑ How should property rights be defined?
- ❑ Do you agree with the proposal to make it more difficult for Parliament or a provincial legislature to apply the notwithstanding clause?

Proposal 2.
Recognition of Quebec's Distinctiveness and Canada's Linguistic Duality

English and French throughout Canada

The Government of Canada proposes that a section be included in the Charter stating that the *Charter of Rights and Freedoms* shall be interpreted in a manner consistent with the recognition of Quebec as a distinct society within Canada. The section would read:

25.1 (1) This Charter shall be interpreted in a manner consistent with:

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.

Recognition of Quebec as a distinct society

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes:

(a) a French-speaking majority;

(b) a unique culture; and

(c) a civil law tradition.

Background

- ✓ The Charter already contains clauses recognizing aboriginal rights and our multicultural heritage. The lack of a similar recognition relating to Quebec needs to be remedied.
- ✓ Other provinces have unique constitutional arrangements (e.g., Manitoba joined Confederation with special obligations pertaining to language).
- ✓ Quebec joined Confederation as a province with its own language, culture and legal system. The proposal would recognize the historical and current reality of Quebec as a distinct society.
- ✓ The proposal confers no special powers on Quebec, as made clear by section 31 of the Charter.

Questions

- Is this proposal the best way to recognize the historical distinctiveness of Quebec in the Constitution?
- Does the definition of "distinct society" encompass the key aspects of Quebec's uniqueness?
- What implications do you think these proposals would have on you individually? On an organization to which you belong?
- Should the Charter include other interpretive clauses?

Proposal 3.
Aboriginal Participation in Current Constitutional Deliberations

Aboriginal participation

The Government of Canada is committed to ensuring that aboriginal peoples participate in the current constitutional deliberations.

Proposal 4.
Aboriginal Self-government

Opportunity for common understanding of aboriginal self-government

The Government of Canada proposes an amendment to the Constitution to entrench a general justiciable right to aboriginal self-government within the Canadian federation and subject to the *Canadian Charter of Rights and Freedoms*, with the nature of the right to self-government described so as to facilitate interpretation of that right by the courts. Self-government negotiations could begin immediately and agreement would immediately be entrenched in the Constitution. In order to allow an opportunity for the Government of Canada, the governments of the provinces and the territories, and aboriginal peoples to come to a common understanding of the content of this right, its enforceability would be delayed for a period of up to 10 years. The Special Joint Committee should examine the broad parameters of the right to be entrenched in the Constitution and the jurisdictions that aboriginal governments would exercise.

Proposal 5.
Aboriginal Constitutional Process

The Government of Canada proposes the entrenchment of a constitutional process to address aboriginal matters that are not dealt with in the current constitutional deliberations and to monitor progress made in the negotiations of self-government agreements.

Proposal 6.
Representation of Aboriginal Peoples in the Senate

The Government of Canada proposes that aboriginal representation should be guaranteed in a reformed Senate.

Background

- ✓ Proposals 3 and 5 would guarantee aboriginal involvement in this round of constitutional reform and in any future constitutional process that specifically addresses ongoing aboriginal issues.
- ✓ Aboriginal self-government has been under discussion for many years without achieving a common understanding of what it actually means and how it would be implemented.
- ✓ Proposal 4 would entrench the right to aboriginal self-government in the Constitution:
  a) agreements reached on aboriginal self-government would be immediately protected under the Constitution;
  b) after ten years, if no agreements have been reached, the courts could be asked to interpret the right of self-government.

Questions

- ❑ What do you think is meant by aboriginal self-government?
- ❑ What potential problems may arise if the right to aboriginal self-government were entrenched in the Constitution and came into effect immediately, before negotiating self-government agreements? What problems might arise if self-government were not implemented until the courts had ruled on its meaning?
- ❑ Does the proposal provide a reasonable balance between these two alternatives?
- ❑ Is ten years an appropriate time frame to negotiate how aboriginal self-government would be implemented?
- ❑ Is guaranteed aboriginal representation in the Senate appropriate? How should it be implemented?
- ❑ What type of process should be put in place to address aboriginal constitutional issues on an ongoing basis?

Proposal 7.
A Canada Clause in the Constitution

The Government of Canada proposes that a "Canada clause" that acknowledges who we are as a people, and who we aspire to be, be entrenched in section 2 of the *Constitution Act, 1867*. The Government of Canada believes that it would be appropriate for the following characteristics and values to be reflected in such a statement:

Who we are as a people

- a federation whose identity encompasses the characteristics of each province, territory and community;
- the equality of women and men;
- a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background;
- recognition that the aboriginal peoples were historically self-governing, and recognition of their rights within Canada;
- recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities;
- the special responsibility borne by Quebec to preserve and promote its distinct society;
- the contribution to the building of a strong Canada of peoples from many cultures and lands;

Canadian characteristics and values

- the importance of tolerance for individuals, groups and communities;
- a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations;
- respect for the rights of its citizens and constituent communities as set forth in the *Canadian Charter of Rights and Freedoms;*
- the free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada;
- a commitment to the well-being of all Canadians;
- a commitment to a democratic parliamentary system of government;
- the balance that is especially Canadian between personal and collective freedom on the one hand and, on the other hand, the personal and collective responsibility that we all share with each other.

Background

- ✓ The current Constitution outlines the rules by which Canada governs itself, but does not contain a clear statement of the values that underlie those rules. The proposed Canada clause is designed to do this.
- ✓ The clause would seek to embody basic Canadian values and fundamental characteristics of Canada. It would help us recognize what distinguishes us from other countries, and set out enduring characteristics which Canadians feel are important to preserve and to strengthen. It would represent a current statement of who we are.

Questions

- ❑ Is the proposed clause representative of Canada and its people?
- ❑ Are the values set out in the Canada clause the values which you consider fundamental to Canada?
- ❑ If you were to write your own Canada clause, how would you express the fundamental values and enduring characteristics of Canada?

PART II:
RESPONSIVE INSTITUTIONS FOR A MODERN CANADA

Making federal institutions more democratic and responsive

Part II of the proposals is aimed at making federal institutions more democratic and more responsive to Canadians.

Proposal 8.
House of Commons

Parliamentary reform

The Government of Canada commits itself to a process of further parliamentary reform to give individual MPs more free votes and to reduce the application of votes of confidence.

Background

- ✓ Proposals to hold more free votes and to reduce the role of "votes of confidence" would give individual MPs more freedom to represent the views of their constituents.
- ✓ Proposal 8 does not require any constitutional change.

Questions

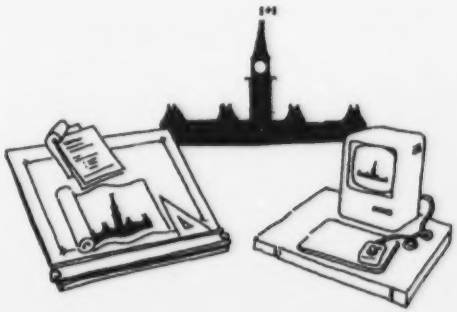
- ❑ Would free votes help improve the responsiveness of Parliament?
- ❑ There is potential for other aspects of reform to the House of Commons, and you are invited to suggest other areas for consideration.

Proposal 9:
Principles of Senate Reform: an Elected, Effective and more Equitable Senate

The Government of Canada proposes that:

- the Senate be directly elected;
- Senate elections coincide with elections to the House of Commons;
- the Senate's composition provide for much more equitable provincial and territorial representation than at present;
- the House of Commons remain the primary legislative body;
- as a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required, as at present;
- for matters of language and culture, the Senate would also have a double majority special voting rule;
- for matters of national importance, such as national defence and international issues, the Senate would have a six-month suspensive veto. Following expiry of the suspensive veto, the House of Commons would be required to repass the legislation for it to become law;
- since the Senate is not a confidence chamber, the Senate would have no legislative role in relation to appropriation bills and measures to raise funds including borrowing authorities;
- guaranteed representation be provided for aboriginal Canadians in the Senate;
- the Senate continue to have a mandate to conduct special inquiries into issues of public policy.

An elected, effective and more equitable Senate



Proposal 10.
Details of Senate Reform

The Government of Canada proposes that the Special Joint Committee of Parliament consider the following issues:

- the form of direct election to the Senate;
- the appropriate number and distribution of Senate seats;
- in consultation with the aboriginal peoples, the appropriate representation of Canada's First Peoples.

Proposal 11.
Senate Ratification of Appointments to Regulatory Boards and Agencies

Senate to ratify appointments to national institutions

The Government of Canada proposes that the Senate be given a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions, such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, the national museums, the Canadian Film Development Corporation, the Canada Council and the National Arts Centre, as well as the heads of regulatory boards and agencies such as the National Energy Board, the National Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency.

Background

✓ The original distribution of Senate seats was based on the equal representation of the three regions of Canada at the time of Confederation, the Maritimes, Quebec and Ontario. This historical logic is now outdated and neglects the expansion of Canada to the west.

More equitable representation than at present

- ✓ With the addition of new provinces in Western Canada, 24 seats were added for a fourth region. More recently, 6 seats were added for Newfoundland when it joined Canada in 1949 and Yukon and the Northwest Territories were each given a Senate seat in 1975. Given the reality of Canadian politics, provinces, not regions, would appear to be the appropriate basic units for Senate representation.
- ✓ The government proposes that a reformed Senate be much more equitable in its representation than now. Options range from weighted representation, as in Germany, to equal representation of provinces.
- ✓ These proposals give the Senate a wide range of real powers over legislation and appointments.
- ✓ Canadians want government to be more open and responsive and ratification of federal appointments is one way to achieve this.
- ✓ Other countries, including the United States, have ratification processes we can learn from.

Questions

- ❑ What kind of Senate would you favour? Do you have advice on:
  - whether Senators should be elected?
  - procedures to elect Senators?
  - the number and distribution of seats among the provinces and territories?
  - how to represent aboriginal people?
  - other ideas which should be considered in Senate reform?
- ❑ Is the Senate the appropriate forum for reviewing these appointments, or is there a more effective mechanism?
- ❑ Are there other federal government appointments which should be reviewed in this manner?

A role for provinces and territories in Supreme Court appointments

Proposal 12. Appointments to the Supreme Court of Canada

The Government of Canada will introduce a constitutional amendment to provide for a role for the provinces and the territories in Supreme Court appointments, whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada.

In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any unanimity items in the final package.

Background

- ✓ Currently, the *Supreme Court Act* ensures that at least three of the nine Supreme Court justices are from the Quebec Bar; Quebec is the only province with its own civil law system. By practice, although not by law, three justices are usually appointed from Ontario, two from Western Canada and one from Atlantic Canada.
- ✓ Provincial and territorial input is considered important in the selection of Supreme Court justices because:
  - many matters decided by the court are constitutional issues affecting federal and provincial powers; and
  - regional balance is important in ensuring that the court's decisions reflect the reality of Canada.

Questions

- ❑ What other recommendations would you make regarding the process of appointments to the Supreme Court?

Proposal 13.
The Constitutional Amending Formula

The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if a consensus on this matter were to develop; if the accession of existing territories to provincehood were to proceed on the basis of the current amending formula; and if it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.

Amending formula changes require unanimity

Background

- ✓ Currently, most sections of the Constitution can be amended with the support of Parliament and seven provinces representing 50% of the population. Changing some other sections requires the unanimous consent of Parliament and all provinces. For example, unanimous consent is needed to change the amending formula itself.
- ✓ Under this proposal no provincial consent would be required to create new provinces in the territories, as was the case for the creation of existing provinces.
- ✓ The Government of Canada would only be prepared to address the amending formula if there were agreement to proceed with other constitutional changes that require unanimity.

Unanimous consent not required to create new provinces

Questions

- ❑ Should the amending formula be addressed in this round of constitutional changes, or
- ❑ Should the amending formula be left as it is for now, to allow us to move ahead on other items?

PART III:
PREPARING FOR A MORE PROSPEROUS FUTURE

A well-governed, more internationally competitive country

Part III which includes proposals 14 to 28 aims at making Canada a well-governed country, and more competitive internationally. You will note that they are not in numerical order. Instead, they are grouped according to the issue being addressed in each proposal and similarities between proposals. For example, proposals 22 and 23 are grouped with 25 and follow proposal 26.

Proposal 14.
Broadening s.121, the Common Market Clause

The Government of Canada proposes that section 121 of the *Constitution Act, 1867* be amended to read as follows:

An economic union

Section 121 (1) Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions based on provincial or territorial boundaries.

(2) Neither the Parliament or Government of Canada nor the legislatures or governments of the provinces shall by law or practice contravene the principle expressed in subsection (1).

Further principles of equalization or regional development

(3) Subsection (2) does not render invalid

(a) a law of the Parliament of Canada enacted to further the principles of equalization or regional development;

(b) a law of a provincial legislature enacted in relation to the reduction of economic disparities between regions wholly within a province that does not create barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province than it does in relation to persons, goods, services or capital from a region within the province; or

Reduction of economic disparities

(c) a law of the Parliament of Canada or of the legislature of a province that has been declared by Parliament to be in the national interest.

(4) A declaration referred to in paragraph (3) (c) shall have no effect unless it is approved by the governments of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(5) This section shall come into force on July 1, 1995.

Proposal 15.
Power to Manage the Economic Union

Laws for efficient functioning of economic union

The Government of Canada proposes that the following section be added to the *Constitution Act, 1867* immediately after section 91:

91A (1) Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union.

No effect unless approved

(2) An Act of the Parliament of Canada made under this section shall have no effect unless it is approved by the governments of at least two thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(3) The legislative assembly of any province that is not among the provinces that have approved an Act of the Parliament of Canada under subsection (2) may expressly declare by resolution supported by 60 percent of its members that the Act of Parliament does not apply in the province.

(4) A declaration made under subsection (3) shall cease to have effect three years after it is made or on such earlier date as may be specified in the declaration.

The Government of Canada also proposes that the Special Joint Committee consider whether the opting-out provision should be renewable.

Proposal 16.
Harmonization of Economic Policies

Improve coordination of fiscal and monetary policy

The Government of Canada proposes to develop, with the provinces, an annual timetable to allow for more open and visible budget-making processes.

The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Once approved, these guidelines would

be set in federal legislation under the new economic union power. Accordingly, these guidelines would require the approval of at least seven of the provinces representing 50 percent of the population, and up to three provinces could opt out.

Monitor and evaluate macro-economic policies

The Government also proposes to discuss with the provinces the establishment of an independent agency to monitor and evaluate the macroeconomic policies of the federal and provincial governments.

Proposal 17. Reforms to the Bank of Canada.

Mandate Bank of Canada to achieve price stability

The Government of Canada proposes to amend the *Bank of Canada Act* to make it clear that the mandate of the Bank is to achieve and preserve price stability. To ensure regional representation on the Board of Directors of the Bank of Canada, the Government will solicit the views of provincial and territorial governments and consult with them before making appointments to the Board. In addition, the Government proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. The Government will also solicit the views of provincial and territorial governments with respect to the membership of the regional panels. Moreover, the appointment of the Governor of the Bank of Canada would be subject to Senate ratification.

Background

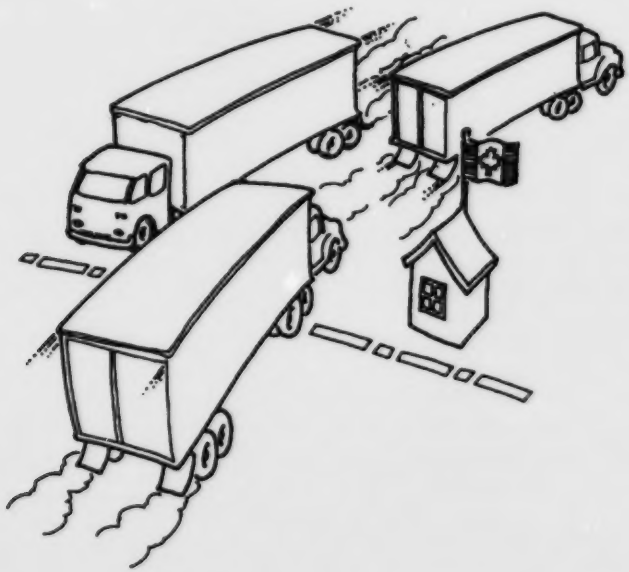
Interprovincial trade barriers

- ✓ Barriers to the mobility of people, goods, services and capital within Canada weaken Canada's economy and our ability to compete internationally.
- ✓ There are more trade barriers between provinces in Canada than between Canada and other countries, including the European Union. Many governments within Canada discriminate in trade, on the basis of province or territory.
- ✓ There is currently no formal mechanism within Canada to coordinate economic and fiscal policies between the federal and provincial governments.
- ✓ These proposals would encourage governments to take action to ensure a more consistent economic approach among the federal government and the various provinces. The procedures suggested involve roles for both the federal and provincial governments in partnership, since management of the economic union is a matter of shared responsibility. Thus, where the federal government is given additional powers, it would require endorsement by at least seven provinces representing 50 percent of the population.
- ✓ The mandate of the Bank of Canada would be to ensure price stability. Provincial and territorial input to the Bank would also be improved.

Questions

- ❑ Should the free flow of people, goods, services and capital be entrenched in the Constitution as a basic principle in Canada?
- ❑ What are the potential advantages and drawbacks of eliminating interprovincial barriers?
- ❑ Are there any legitimate reasons for interprovincial barriers to exist in some cases? Does the proposal protect these exceptions?

- Should the federal government be given additional means to manage the economy? Should these be entrenched in the Constitution?
- Should provinces be able to opt out of federal economic union legislation?



- What should be the mandate of the Bank of Canada? Should the Bank be preoccupied with keeping inflation low, or should it also address other objectives, e.g., generating economic growth or encouraging increased employment?
- Is regional input to the Bank important? Are the proposed measures for regional involvement adequate?

Labour market training exclusive provincial jurisdiction

Proposal 18. Training

The Government of Canada proposes that section 92 of the *Constitution Act, 1867* be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.

Immigration agreements

Proposal 19. Immigration

While recognizing the federal role in setting Canadian policy and national objectives with respect to immigration, the Government of Canada is prepared to negotiate with any province, agreements appropriate to the circumstances of that province and to constitutionalize those agreements.

Culture agreements

Proposal 20. Culture

The Government of Canada will negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government. Where appropriate, such agreements would be constitutionalized.

Proposal 21. Broadcasting

The Government of Canada proposes to:

1. consult with the provinces on the issuance of new licences;
2. provide provincial governments and their agents with the opportunity to evolve into full public broadcasting undertakings with varied programming, subject to CRTC regulation;
3. further regionalize the operations of the CRTC and expand the roles of its regional offices;
4. allow for provincial participation in the nomination of regional commissioners of the CRTC.

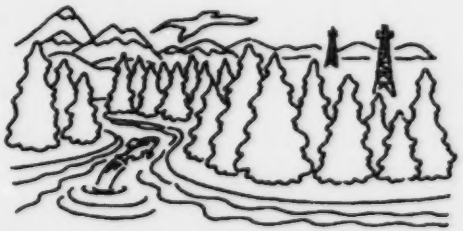
Provincial participation in broadcasting

Proposal 24. Recognizing Areas of Provincial Jurisdiction

While the Government of Canada is committed to ensuring the preservation of Canada's existing research and development capacity and its obligations for international and native affairs, it is prepared to recognize the exclusive jurisdiction of the provinces and discuss how best to exercise its own responsibilities in a manner appropriate to the sector in the following areas:

Recognition of exclusive provincial jurisdiction

- tourism
- forestry
- mining
- recreation
- housing
- municipal/urban affairs



Proposal 26. Candidates for Streamlining

Rationalization of government programs and services

In order to provide Canadians with the best service at the lowest possible cost, the federal government is prepared to discuss with the provinces the rationalization of government programs and services by reviewing which level of government can best deliver them. All proposals from the provinces will be considered. As a starting point, the Government proposes to discuss the following areas with the provinces:

All proposals from provinces considered

- drug prosecutions
- wildlife conservation and protection
- transportation of dangerous goods
- soil and water conservation
- ferry services
- small craft harbours
- some aspects of financial sector regulation
- some aspects of bankruptcy law
- some aspects of unfair trade practices
- inspection programs

Background

There are certain areas in which the federal and provincial governments are currently both active, through various programs, financial support and legislation. The federal government proposes to transfer jurisdiction for labour force training to provinces in proposal 18 (because it is related to the educational system, which is an area of exclusive provincial jurisdiction) and to recognize the exclusive provincial jurisdiction in the areas mentioned in proposal 24.

✓ An agreement has already been negotiated with the Government of Quebec concerning federal and provincial activities in immigration, and negotiations are underway with other provincial governments. This proposal would allow these agreements to be entrenched in the Constitution along with any agreements concluded in the area of culture.

- ✓ The federal government is responsible for regulating broadcasting because this activity crosses provincial and territorial boundaries. Provincial input into broadcasting decisions is intended to better reflect regional differences.
- ✓ Proposal 26 is designed to reduce duplication between federal and provincial governments. The list of candidate areas for streamlining suggests where gains may be made through administrative arrangements to improve the efficiency of programs delivered to Canadians.

Agreements could be entrenched in Constitution

Questions

- ❑ Will these proposals help bring decision making in these areas closer to the people?
- ❑ What things should be considered in deciding who should have responsibility or jurisdiction in a certain area?
- ❑ Are there other areas which should be designated as the responsibility of the provinces?
- ❑ Should there be continued federal involvement in these areas?
- ❑ What criteria should guide the federal-provincial discussions of streamlining in these areas?
- ❑ What other areas should be considered for streamlining?
- ❑ Is greater regional input to the Canadian Radio-television and Telecommunications Commission necessary? Are the measures in proposal 21 the best way to achieve this?

Transfer authority for non-national matters not assigned to federal government to provinces

Proposal 22.
The Residual Power

The Government of Canada proposes to reserve to itself the Peace, Order and Good Government clause of the *Constitution Act, 1867* to maintain its authority to deal with national matters or emergencies. However, the Government of Canada is prepared to transfer to the provinces authority for non-national matters not specifically assigned to the federal government under the Constitution or by virtue of court decisions.

Proposal 23.
The Federal Declaratory Power

The Government of Canada is prepared to support a constitutional amendment to remove the declaratory power set out in section 92(10)(c).

Delegation of powers between Parliament and legislatures with mutual consent

Proposal 25.
Legislative Delegation

The Government of Canada endorses the recommendation of the Beaudoin-Edwards Joint Parliamentary Committee that there be a constitutional amendment providing for delegation of legislative powers between Parliament and the legislatures, and that there be provisions inserted in the Constitution to enable the delegation of legislative authority between the two levels of government with the mutual consent of the legislative bodies involved.

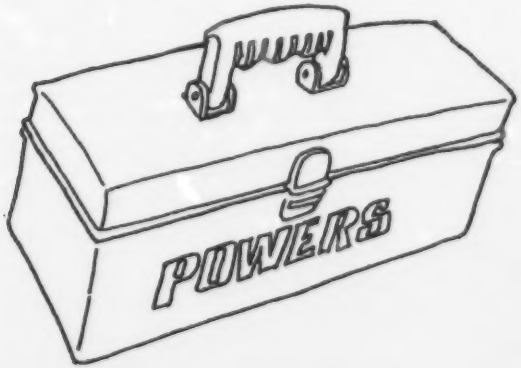
Background

- ✓ The residual power gives the federal government authority over all matters not specifically assigned in the Constitution. The transfer of the residual power to the provinces would bring Canada in line with other federations, such as the United States, Australia, Switzerland and Germany. The federal government would keep authority to deal with national matters and emergencies.

- ✓ Proposal 23 would abolish the declaratory power, a unilateral federal power, which has been used infrequently.
- ✓ With legislative delegation, the federal and provincial governments could transfer legislative jurisdiction to each other. This delegation would not alter the permanent federal and provincial jurisdictions under the Constitution, since any authority delegated could be taken back.

Questions

- ❑ Will the transfer of authority for non-national matters to the provinces, and retaining only the "peace, order and good government" clause, allow the federal government to continue to deal effectively with national matters and emergencies?
- ❑ Would the power to delegate legislative authority between the federal and provincial governments be useful?
- ❑ Should there be limits on the delegation of legislative authority? If so, what limits would you suggest?



Shared-cost programs and conditional transfers; approval of at least 7 provinces representing 50% of population

Proposal 27.
The Exercise of the Federal Spending Power in Areas of Exclusive Provincial Jurisdiction

The Government of Canada commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50 percent of the population. This undertaking would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces which establish their own programs meeting the objectives of the new Canada-wide program.

Background

- ✓ Federal spending power is not defined in the Constitution, but has been set out very clearly by the Supreme Court, based on the federal government's constitutional authority for comprehensive taxing power and control over "the public debt and property".
- ✓ Some provinces have objected to the use of the federal spending power in areas of exclusive provincial jurisdiction as an incursion into their constitutionally assigned jurisdictions.
- ✓ In some cases, there has been duplication and inefficiency in areas where the federal spending power has been used.
- ✓ The proposals would apply only to the introduction of new Canada-wide shared-cost programs and to conditional transfers in areas of exclusive provincial jurisdiction, not to existing programs such as Medicare.
- ✓ The proposal would establish a process for the federal government to work more closely with the provinces to create new shared-cost programs that meet national objectives and respect local differences.

Questions

- ❑ Would this proposal protect provincial governments from unwanted federal intervention in their areas of exclusive jurisdiction?
- ❑ Would it protect the federal government's responsibility to ensure the consistency and availability of public services to all Canadians?

Inter-governmental coordination, collaboration

Fiscal harmonization

Proposal 28.
Working Together: A Council of the Federation

The Government of Canada proposes the entrenchment of a Council of the Federation, composed of federal, provincial and territorial governments, that would meet to decide on issues of intergovernmental coordination and collaboration. The Council would have the mandate to vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power; to vote on guidelines for fiscal harmonization and coordination as well as to decide on processes to improve future collaboration in this area; and to make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction. All decisions of the Council of the Federation would require the approval of the federal government and of at least seven provinces representing 50 percent of the population.

Background

Decisions require approval of federal government and at least 7 provinces

- ✓ The Council of the Federation would provide a forum where provincial and federal governments could participate on an equal footing to consider matters in which they have a joint interest.
- ✓ The Council would help co-ordinate and harmonize federal, provincial and territorial economic policies.
- ✓ The Council could make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction.

Questions

- ❑ Is this the most effective mechanism for co-ordinating federal, provincial and territorial economic policies?
- ❑ What mandate would you suggest for the Council of the Federation?
- ❑ Could you see other areas where such a mechanism could be helpful?

OTHER INFORMATION

SPECIAL JOINT COMMITTEE ON A RENEWED CANADA

Members of the Senate

The Hon. E.W. Barootes
The Hon. Gerald Beaudoin - Co-Chairperson
The Hon. Royce Frith
The Hon. Dan Hays
The Hon. Allan MacEachen
The Hon. Michael A. Meighen
The Hon. Donald H. Oliver
The Hon. Maurice Riel
The Hon. Nancy E. Teed

Members of the House of Commons

The Hon. Warren Allmand
Jean-Pierre Blackburn
Ethel Blondin
Gabriel Desjardins
Dorothy Dobbie - Co-Chairperson
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Albina Guarnieri
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Howard McCurdy
Robert D. Nicholson
Lorne Nystrom
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SOURCES OF INFORMATION

1. The Proposals

Shaping Canada's Future Together
(Detailed version covering all 28 proposals)

Highlights (brochure)

"Householder" with open letter from the Minister Responsible for Constitutional Affairs

2. Background Papers

Shaping Canada's Future Together: Speech by the Prime Minister at the House of Commons, September 24,1991

Canadian Federalism and Economic Union: Partnership for Prosperity

The European Community: A Political Model for Canada

The History of Canada's Constitutional Development

Shared Values: The Canadian Identity

Aboriginal Peoples, Self-Government, and Constitutional Reform

3. Video

In order to foster understanding and encourage the participation of Canadians in the debate on constitutional change, the Government of Canada has prepared a 15 minute video describing the key issues in the constitutional reform proposals which were tabled last September.

Using "Shaping Canada's Future Together" as a guide, the video provides an overview of the constitutional proposals and examines a wide range of issues related to the constitutional process.

A video for the hearing impaired is also available.

For information on how to obtain the above documents or a copy of the video, call 1-800-561-1188, or write to:

Distribution Centre
414 Cooper Street
Ottawa, Ontario K1A 0A6